IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 6697 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. P.M. Pradhan with Mr. H.S. Anand for Petitioner.
Mr. A.H. Palekar, A.G.P. for R. No. 1.
Mr. S.G. Surana for R. No. 2.
Mr. Abhay Pandey i/by M.P. Vashi for R. No. 3.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 20, 2005

P.C.

. The Petitioner herein has impugned the order dated 16.8.2003 passed by the Chief Executive Officer of Zopadpatti Punarvasan Adhikari under Article 227 of the Constitution of India. It is contended that the said decision would be clearly contrary to directions as contained in the minutes of the meeting held at 3.00 pm. at 21.1.2003. From the Minutes, it is submitted that as per Survey List Sr. No. 515 Smt. Ashu Dimple Gani has been held eligible along with Shri. Papamiya for hut T-19 and that the name of Shri. Sheikh Rabani is shown in the voters list under hut T-3 which was sold to the Petitioner. It is therefore, submitted that the enquiry could not be held as to the claim of the

Petitioner against Smt. Gani. It is then the case that in so far as petitioner is concerned, he claims hut T-3. From the records what is set out is that the name of Shaikh Rabani mentioned in the voters list in respect of hut T-3 and all the rights in respect of his room were sold to Shri. Chhajera vide affidavit of 1993. It is therefore, submitted that the decision by the Chief Executive Officer is clearly without jurisdiction and contrary to the records.

. From the documentary evidence, which is on record including the appeal memo preferred by the petitioner herein, it is clearly in respect of notice being No. 515/99. It is therein set out that the competent authority wrongly issued notice to Respondent No. 3 though she is not residing in that structure. Thereafter there is representation which is undated at Page 41 of the Petition in which the petitioner herein has sought deleting name of Respondent NO. 3 and allotment of the structure to him. In Paragraph 4 and 5 again it is set out that the name of Respondent No. 3 ought not to have been included and the prayer clause again it is reiterated that the name of Respondent NO.

3 be deleted from the notice dated 29.4.1999. Next is the letter dated 1.11.2002 addressed on behalf of the petitioner by his lawyer. Once again it seeks exclusion of the name of Respondent No. 3 in the list of Annexure II at Sr. No. 515. That is not all. In the petition filed before this court in Paragraph 4 and 5 again what is sought is exclusion of the name of Respondent NO. 3. It is therefore, clear from the correspondence and pleadings that the petitioner through out has been contending that the entry in favour of Respondent No. 3 at Sr. No. 515 is illegal and that ought to be cancelled and instead his name be included. That is the controversy which was considered by the authority and has been decided.

. It is no doubt true that from the minutes as recorded in the meeting held by the Deputy Secretary there seems to be some ambiguity about the structure. It is firstly set out that the eligibility of Smt. Gani and Shri. Chajera be reviewed and then to hold whether Smt. Gani and Smt. Papamiya are eligible. The fact however, remains that through out the claim of the petitioner has been against

Respondent NO. 3. The authority has considered the evidence produced by the authorities in so far as No. 515 is concerned and thereafter has held that the documents produced by the petitioner cannot be relied upon and the documents produced by Respondent No. 3 are credible and considered them. These are purely findings of fact. There is a clear finding recorded in favour of Respondent No. 3 to the structure. These are purely findings of fact based on the evidence and contentions advanced before the authority. It was not the stand of the Petitioner before the authority that he has an independent structure unconnected with the claim of Respondent No. 3 and that he has no claim for the structure claimed by Respondent No. 3. This is therefore, not a fit case for this court to exercise its extra ordinary jurisdiction. Hence, petition rejected.

C.C. expedited.

. P.A. to issue authenticated copy of this order.

(F.I. REBELLO,J.)